

**BEFORE THE EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110 001

Dated: 14th October, 2021

RTI Appeal Registration No. ISBBI/A/E/21/00025

IN THE MATTER OF

Ketan Bipinchandra Jasani

... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India

2nd Floor, Jeevan Vihar Building

Sansad Marg, New Delhi- 110 001.

... Respondent

ORDER

1. The Appellant has filed present Appeal dated 21st September 2021, challenging the communication of the Respondent dated 1st September 2021 with regard to his RTI Application No. ISBBI/R/T/21/00019 dated 26th August 2021 filed under the Right to Information Act, 2005 (RTI Act).
2. I have carefully examined the Application, the response of the Respondent and the Appeal and find that the matter can be decided based on the material available on record. It is noted that the Appellant had asked in his Application as to whether a Registered Valuer Organisations (RVO) can compel its members (Registered Valuers – RVs) to disclose the professional fee for each valuation assignment. The Respondent had provided the following response to the Appellant: -

“The IBBI, a statutory body regulates the Registered valuer in accordance and bye laws of Part-II under Annexure-III of the Companies (Registered Valuers and Valuation) Rules, 2017 that includes disclosure to be made by the Registered Valuer

Further, Clause 20 of Para VIII of the model bye laws of Part-II under Annexure-III of the Companies (Registered Valuers and Valuation) Rules, 2017 provides for the monitoring of members that includes the disclosure of transaction.

The Companies (Registered Valuers and Valuation) Rules, 2017, are available on the website of the Board. The link is hereby given below:

<https://www.ibbi.gov.in/legal-framework/rules>”

3. The appellant has filed the instant Appeal submitting that :

“.....3.1. Referring the notification (F.No. 1/27/2013-CL-V(Part-I)) dated 23/10/2017,

3.1.1. It confirms that The Central Government delegates the power and functions vested in it under section 247 of the said Act (i.e. The company act 2013) to the Insolvency and Bankruptcy Board of India(i.e. IBBI).

3.1.2. Referring the section 247 of the said act, it is silent (i.e. does not confirm) on “Monitoring function” by IBBI / RVO / any authority. Kindly confirm whether the companies (registered valuers and valuation) rules, 2017 ultra vires to the section 247 of the companies act 2013.

3.2. Referring the mentioned bye-laws of Part-II under Annexure-III of the Companies (Registered Valuers and Valuation) Rules, 2017,

3.2.1. It confirms having title: “MODEL BYE-LAWS OF A REGISTERED VALUERS ORGANISATION” i.e. applicability of mentioned part & annexure to the REGISTERED VALUERS ORGANISATION (RVO) and not to RV (Registered Valuer).

3.3. Referring Clause 20 of Para VIII of the model bye laws of Part-II under Annexure-III of the Companies (Registered Valuers and Valuation) Rules, 2017,

3.3.1. It confirms applicability of mentioned clause, Para, Part & Annexure to the REGISTERED VALUERS ORGANISATION(RVO) and not to RV (Registered Valuer).

4. Referring Clause 13-g of Para VII of the model bye laws of Part-II under Annexure-III of the Companies (Registered Valuers and Valuation) Rules, 2017,

4.1. “In the performance of his functions, a member (i.e. Registered Valuer – RV) shall maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law”.

4.1.1. Here, RVO (i.e. an organization), registered as Company limited by Shares (Non- Govt) Public - non listed company, becomes “third party” for the valuation assignment carry out by the RV.

4.1.2. Kindly inform the law with its clause / rule which give power/ authority to third party i.e. “RVO” to compel RV (i.e. its members) to disclose the professional fee for each valuation assignment.

5. Referring the Companies Act 2013 section – 247 and the Companies (registered valuers and valuation) rules, 2017, kindly inform clause / rule which compel to RV (Registered Valuer) to disclose the professional fee of each valuation assignment to its RVO and/ or third party.”

4. It is pertinent to mention here that the Appellant’s “right to information’ flows from section 3 of the RTI Act and the said right is subject to the provisions of the Act. Section 2(j) of

the RTI Act defines the “*right to information*” in terms of information accessible under the Act which is held by or is under the control of a public authority. The inclusive list provides for the right to - (i) *inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.*

5. In terms of section 2(f) of the RTI Act ‘*information*’ means any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”
6. The aforesaid definitions contemplate providing of material in the forms of records, documents, opinions, advices, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. As stated in the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28th November, 2013 - “*The Public Information Officer is not supposed to create information that is not a part of the record of the public authority. The Public Information Officer is also not required to furnish information which require drawing of inference and/ or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.*”
7. The Appellant had, in his Application, asked questions as to whether a RVO compels its members (i.e. RVs) to disclose the professional fee of each valuation assignment under of IBC and, if yes, under which provisions of the law? These questions, in my view, are in nature of inquiries soliciting guidance, advice and opinion and beyond the scope of right to information under the RTI Act. In this regard, it is relevant to mention that the Hon’ble Supreme Court of India in its judgment dated August 9, 2011, in the matter of *Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors., inter alia*, held that:

“*A public authority is also not required to furnish information which require drawing of inferences and/ or making of assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority...*”
8. Nevertheless, the Respondent has provided relevant guidance and also the link where the full text of applicable law i.e. the Companies (Registered Valuers and Valuation) Rules, 2017(Rules) can be accessed to. Even if I were to hold that the request of the Appellant is

an information request, the response of the Respondent cannot be questioned as the request was adequately responded.

9. In this Appeal, the Appellant, has now enlarged the scope of his Application by asking additional clarifications/opinions on his assumptions and understanding about the Rules which are beyond the original statements in his Application. This cannot be allowed at this stage. I further, note that the Appellant has, in this Appeal, mainly asked questions in the nature of confirmations and opinions again. I have already held that such requests are beyond the scope and ambit of sections 2(j) and 3 of the RTI Act. I also hold that the instant Appeal is beyond the scope of right to Appeal under the RTI Act as the Appellant has sought confirmation and explanation to his understanding of the provisions of the Rules and has raised hypothetical questions based on his assumptions rather than any grievance as contemplated under Section 19 of the RTI Act.

10. Further, the Hon'ble CIC in *M Jameel Basha Vs. CPIO, Ministry of Personnel Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi -110001, File No: CIC/MPERS/A/2017/158527/SD* (Decision dated 06.05.2019), has observed the following:

“Commission concedes with the submission of the CPIO as no information has been sought as per Section 2(f) of the RTI Act. It may be noted that under RTI Act, CPIO is not supposed to create information or interpret/clarify/deduct information in respect of queries/clarifications. Similarly, redressal of grievance, non-compliance of rules, contesting the actions of respondent public authority and suggesting correction in government policies are outside the purview of the RTI Act.”

11. In view of the above, I find that the Appeal is not maintainable and there is no reason to interfere with the decision of the Respondent. The Appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

1. Appellant, Ketan Bipinchandra Jasani.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.